Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

13 May 2026*

(Failure of a Member State to fulfil obligations – Article 258 TFEU – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 5(1) – Obligation for Member States to introduce measures to prevent and penalise the misuse of successive fixed-term employment contracts – Absence of such measures – Concept of 'objective reasons' justifying the renewal of such contracts)

In Case C-155/25,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 21 February 2025,

European Commission, represented by S. Delaude and D. Recchia, acting as Agents,

applicant,

v

Italian Republic, represented by S. Fiorentino, acting as Agent, and by A. Berti Suman and L. Fiandaca, avvocati dello Stato,

defendant,

THE COURT (Tenth Chamber),

composed of J. Passer, President of the Chamber, D. Gratsias and B. Smulders (Rapporteur), Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Italian.

Judgment

1 By its application, the European Commission claims that the Court should:

– declare that, by failing to take measures designed to prevent the misuse of successive fixed-term contracts for replacement administrative, technical and auxiliary staff ('ATA staff') employed in public educational establishments, the Italian Republic has failed to fulfil its obligations under Clause 5 of the framework agreement on fixed-term work of 18 March 1999 ('the Framework Agreement'), which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43); and

– order the Italian Republic to pay the costs.

Legal context

European Union law

2 Clause 5 of the Framework Agreement, entitled 'Measures to prevent abuse', states, in point 1:

'To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term employment contracts or relationships;

(c) the number of renewals of such contracts or relationships.'

Italian law

3 Decreto legislativo n. 297 – Approvazione del testo unico delle disposizioni legislative vigenti in materia di istruzione, relative alle scuole di ogni ordine e grado (Legislative Decree No 297 approving the consolidated text of the provisions applicable to education relating to schools of all types and levels) of 16 April 1994 (GURI No 115 of 19 May 1994, Ordinary Supplement No 79; 'Legislative Decree No 297/1994') provides, in Article 554:

'1. Permanent appointments to fourth-level posts are made through provincial competitive selection procedures based on qualifications, organised annually within the limits of vacant posts by the school authorities on the basis of an order from the Minister of Education, which specifies, in particular, the required qualifications and the assessment criteria.

2. These competitive selection procedures are open to non-tenured ATA staff who have at least two years' service, without any disciplinary record, in roles corresponding to those for which the competitive selection procedures are organised. It is possible to take part only in a competitive

selection procedure organised in the province in which the candidate is in service on the date of publication of the notice.

3. Non-tenured ATA staff who have completed at least two years' service, in whole or in part, in roles of a higher grade than those for which the competitive selection procedures are organised, are entitled to participate in competitive selection procedures for the immediately lower grade.

…

8. Appointments shall be made, within the limits of the available posts, in accordance with the order of the permanent ranking lists, supplemented and updated with the criteria set out above.'

4 Article 4 of legge n. 124 – Disposizioni urgenti in materia di personale scolastico (Law No 124 laying down urgent provisions on school staff) of 3 May 1999 (GURI No 107 of 10 May 1999; 'Law No 124/1999'), entitled 'Supply teaching posts', states:

'1. Where it is not possible to fill teaching posts and senior teaching posts, which are in fact vacant and unfilled by 31 December and which are expected to remain so for the entire school year, with a teacher from the provincial staff allocation list for tenured teaching staff or by calling upon surplus staff, and provided that no tenured teaching staff have in any way been assigned to the posts, supply teaching posts of one year shall be created, pending the completion of competitive selection procedures for the recruitment of tenured teaching staff.

2. In order to fill non-vacant teaching posts and senior teaching posts which become de facto available by 31 December and up to the end of the school year, temporary supply teaching posts lasting until the end of teaching activities shall be created. Provision shall also be made to create temporary supply teaching posts until the end of educational activities for teaching hours that do not permit the creation of full-time or part-time teaching posts.

3. In cases other than those provided for in paragraphs 1 and 2, temporary supply teaching posts shall be created.

…

11. The provisions of the preceding paragraphs shall apply also to ATA staff.'

5 Decreto ministeriale n. 430 – Regolamento recante norme sulle modalità di conferimento delle supplenze al personale amministrativo, tecnico ed ausiliario ai sensi dell'articolo 4 della legge 3 maggio 1999, n. 124 (Ministerial Decree No 430 laying down rules for the allocation of supply teaching posts for administrative, technical and auxiliary staff pursuant to Article 4 of Law No 124 of 3 May 1999) of 13 December 2000 (GURI No 19 of 24 January 2001), provides, in Article 1 thereof, entitled 'Availability of posts and types of supply teaching posts', as follows:

'1. In accordance with Article 4(1), (2), (3) and (11) of [Law No 124/1999], where it is not possible to fill available [ATA staff] posts by assigning surplus staff currently in service or, for whatever reason, staff on permanent contracts, the following shall be created:

(a) annual supply teaching posts to fill vacant posts available before 31 December and likely to remain available throughout the school year;

(b) temporary supply teaching posts until the end of teaching activities, to cover non-vacant posts available before 31 December and until the end of the school year;

(c) temporary supply teaching posts, for any other supply teaching posts requirement not covered by the previous cases, in accordance with the provisions of Article 6.'

6 Article 36 of decreto legislativo n. 165 – Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (Legislative Decree No 165 laying down general rules on the organisation of work in public authorities) of 30 March 2001 (GURI No 106 of 9 May 2001, Ordinary Supplement No 112; 'Legislative Decree No 165/2001'), entitled 'Staff on fixed-term contracts or employed under flexible employment relationships', provides:

'1. For requirements connected with their everyday needs, public authorities shall recruit exclusively by means of employment contracts of indefinite duration …

2. Public authorities may conclude fixed-term employment contracts, training and work experience contracts and contracts for the supply of fixed-term staff, and use the forms of flexible contracts provided for in the [codice civile (Civil Code, Italy)] and other legislation on employment relationships within the undertaking, exclusively within the limits and in accordance with the procedures laid down for their application in public authorities. Public authorities may conclude the contracts referred to in the first sentence of this paragraph only for proven needs of an exclusively temporary or exceptional nature and in compliance with the conditions and procedures for recruitment laid down in Article 35. Fixed-term employment contracts may be concluded in accordance with Article 19 et seq. of [decreto legislativo 15 giugno 2015, n. 81 – Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell'articolo 1, comma 7, della legge 10 dicembre 2014, n. 183 (Legislative Decree No 81 on the comprehensive regulation of employment contracts and revision of legislation on professional obligations, in accordance with Article 1(7) of Law No 183 of 10 December 2014) of 15 June 2015 (GURI No 144 of 24 June 2015, Ordinary Supplement No 34; "Legislative Decree No 81/2015")] …

…

5. In any event, infringement of mandatory provisions on the recruitment or employment of workers by public authorities cannot lead to the creation of employment relationships of indefinite duration with those public authorities, without prejudice to any liability or sanction which those authorities may incur. The worker concerned shall be entitled to compensation for damage suffered as a result of working in breach of mandatory provisions. In the specific case of damage resulting from the misuse of successive fixed-term employment contracts or relationships, without prejudice to the worker's right to prove any additional damage, the court shall fix compensation between a minimum of 4 months' pay and a maximum of 24 months' pay, based on the last reference remuneration used to calculate the severance pay, taking into account the seriousness of the breach, in particular the number of successive contracts between the parties and the total duration of the relationship.

…

5-quinquies. Without prejudice to paragraph 5, this article shall not apply to the recruitment of [ATA staff] on fixed-term contracts in State and local authority schools and educational establishments, as well as in higher education institutions in the fields of art, music and dance. …'

7 Legislative Decree No 81/2015 establishes, in Chapter III, entitled 'Fixed-term employment', a maximum duration for fixed-term employment contracts (Article 19) and a maximum number of renewals (Article 21). Pursuant to Article 29(2)(c), Chapter III does not apply to 'fixed-term contracts concluded with [ATA staff] for the assignment of supply teaching posts', with paragraph 4 of that article providing that 'the provisions of Article 36 of [Legislative Decree No 165/2001] shall continue to apply.'

8 Legge n. 107 – Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti (Law No 107 reforming the national education and training system and introducing delegation measures for the reorganisation of the legislative provisions in force) of 13 July 2015 (GURI No 162 of 15 July 2015; 'Law No 107/2015') had introduced, in Article 1, paragraph 131, a maximum duration of 36 months, even if not consecutive, for fixed-term employment contracts for teaching and ATA staff in public educational establishments. That provision was repealed by Article 4a of decreto-legge n. 87 – Disposizioni urgenti per la dignità dei lavoratori e delle imprese (Decree-Law No 87 laying down urgent provisions for the dignity of workers and undertakings) of 12 July 2018 (GURI No 161 of 13 July 2018; 'Decree-Law No 87/2018').

Pre-litigation procedure

9 On 26 July 2019, the Commission sent a letter of formal notice to the Italian Republic, in which it expressed its doubts concerning, inter alia, the compliance of several national provisions applicable to replacement ATA staff employed in public educational establishments with Clause 5 of the Framework Agreement, in relation to the misuse of fixed-term contracts.

10 The Italian Republic replied to the complaints and questions raised in that letter of formal notice in several communications. Following a communication of 29 November 2019, the Commission sent that Member State, on 3 December 2020, an additional letter of formal notice, to which that Member State replied, inter alia, by letters of 6 April and 21 September 2021.

11 On 19 April 2023, the Commission sent a reasoned opinion to the Italian Republic in which, inter alia, it maintained its position that the Italian legislation did not comply with Clause 5 of the Framework Agreement as regards the protection of replacement ATA staff against the misuse of fixed-term contracts, and called on the Italian Republic to take the necessary measures to comply with it within two months of receipt of that opinion.

12 In its reply of 8 February 2024 to the reasoned opinion, the Italian Republic again expressed its disagreement with the Commission's position.

13 Unconvinced by that reply, the Commission brought the present action for failure to fulfil obligations.

The action

14 By its action, the Commission alleges that the Italian Republic has failed to fulfil its obligations under Clause 5(1) of the Framework Agreement by failing to take measures to prevent the misuse of successive fixed-term contracts for replacement ATA staff employed in public educational establishments.

Arguments of the parties

15 The Commission submits, in the first place, that there is no measure under Italian law adopted under Clause 5(1)(b) and (c) of the Framework Agreement concerning the maximum total duration of fixed-term employment contracts that may be concluded with replacement ATA staff or the number of renewals of such contracts. It follows from Article 36(5-quinquies) of Legislative Decree No 165/2001 and Article 29(2)(c) of Legislative Decree No 81/2015 that the provisions laying down the maximum duration and maximum number of fixed-term contracts which public authorities may conclude for the purposes of recruiting their staff do not apply to contracts concluded with ATA staff employed in public educational establishments. Furthermore, whilst Article 1(131) of Law No 107/2015 previously laid down limits in that regard, that provision was repealed by Decree-Law No 87/2018.

16 In the second place, that institution submits that Italian law also lacks measures such as those referred to in Clause 5(1)(a) of the Framework Agreement, relating to the objective reasons justifying the renewal of fixed-term employment contracts with ATA staff employed in public educational establishments.

17 In that regard, first, the provisions of Article 4(1) and (11) of Law No 124/1999, which permit the recruitment of ATA staff to fill vacant and unfilled posts in the public education sector on a temporary basis, contain no reference to a requirement, such as a requirement for flexibility specific to the public education sector, which could be linked to the concept of objective reasons within the meaning of Clause 5(1)(a) of the Framework Agreement. Furthermore, the figures published by the Ministero dell'Istruzione (Ministry of Education, Italy) relating to trends in the school-age population and the composition of the workforce would, for their part, appear to contradict the existence of such a requirement. Although there has been a continuous reduction in the number of students since the 2017/2018 academic year, the number and proportion of ATA staff employed on fixed-term contracts appears to have increased during the same period.

18 The Commission infers from this that, even if it is conceivable that the national legislation at issue may, in theory, be based on an objective reason such as a requirement for flexibility linked to the specific characteristics of State schools, no such requirement exists in practice.

19 Secondly, and in any event, the mere existence of an objective reason is not sufficient to establish that the national legislation at issue complies with Clause 5(1)(a) of the Framework Agreement, given that, in the light of the guidance from the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401), such compliance presupposes that that legislation makes it possible to identify objective and transparent criteria in order to verify whether the renewal of fixed-term contracts concluded with the replacement ATA staff actually meets a genuine need and complies with the principle of proportionality.

20 However, the national legislation at issue does not allow such criteria to be identified. On the contrary, the recruitment of ATA staff on the basis of fixed-term contracts is in fact the usual method of recruitment. In order to take part in competitive selection procedures organised to fill permanent posts for replacement ATA staff, candidates must first have been employed under fixed-term contracts and have at least two years' service, which is in clear contradiction with the premiss on which the Framework Agreement is based, namely that employment contracts of indefinite duration are the general form of employment relationships. Furthermore, the

organisation of those competitive selection procedures does not follow a precise timetable, in that it is subject to budgetary constraints and, moreover, depends on the natural attrition of permanent staff.

21 Consequently, according to the Commission, the recruitment of replacement ATA staff by means of fixed-term contracts takes place without the applicable national legislation providing objective reasons within the meaning of Clause 5(1)(a) of the Framework Agreement, since that legislation, on the contrary, allows such contracts to be used to meet fixed and permanent needs. In its reply, the Commission notes, in that context, that the Italian Republic itself acknowledged that in its defence, stating that ATA staff are recruited on fixed-term contracts in order to address 'structural shortages' of staff.

22 In the third place, and for the sake of completeness, the Commission adds that, if the Italian Republic were to take the view that the organisation of several competitive selection procedures in recent years falls within the concept of 'equivalent legal measures' within the meaning of Clause 5(1)(a) of the Framework Agreement, it would have to be considered that such organisation represents only a one-off measure which, at most, makes it possible to put an end, in certain respects, to an abuse which has already occurred, without being such as to prevent the misuse of fixed-term employment contracts in relation to ATA staff employed in public educational establishments. The same is true of the draft legislation referred to by the Italian Republic, the application of which is limited to certain school years.

23 The Italian Republic, for its part, considers that it has complied with the obligations arising from Clause 5(1) of the Framework Agreement.

24 In the first place, that Member State notes that access to permanent posts in the public education sector is achieved through the selection procedures referred to in Article 554 of Legislative Decree No 297/1994, which are open exclusively to non-permanent ATA staff with at least two years' service and in which account is taken of the experience acquired. Thus, service completed under a fixed-term contract makes it possible for that experience to be recognised and contributes to the conclusion of a permanent contract. That is why that scheme was always designed to encourage the renewal of fixed-term contracts with replacement ATA staff, in so far as such renewal would facilitate access to permanent status. In the same vein, it was decided to repeal, by Decree-Law No 87/2018, the maximum duration of 36 months previously provided for such contracts in Article 1(131) of Law No 107/2015.

25 In the second place, such a recruitment mechanism takes account of the specific features of the school system, namely the significant variability in demand for ATA staff according to the number of pupils attending the various schools and geographical areas and the close link between the required number of ATA staff and the size of the student population. Those specific features constitute objective reasons within the meaning of Clause 5(1)(a) of the Framework Agreement.

26 In that context, the Italian Republic points out, first, that it does not appear that that provision requires such objective reasons to be set out in substantive law.

27 Secondly, the increase in ATA staff referred to by the Commission is due to the need to remedy the structural shortage of staff within a system requiring staff rotation. In that regard, however, that Member State emphasises, in its rejoinder, that its argument should not be understood to mean that that structural shortage of staff constitutes, in itself, an objective reason within the meaning of Clause 5(1)(a) of the Framework Agreement.

28 In the third place, the Ministry of Education, from 2019 to 2021, limited the use of fixed-term employment contracts in the case of ATA staff by implementing various recruitment procedures. Furthermore, for the 2023/2024 academic year, it was authorised to recruit a total of 9 975 staff members on permanent contracts, broken down as follows: 2 163 administrative assistants, 717 technical assistants, 7 066 school support staff, 13 technical school support staff (assigned to agricultural operations), 8 cloakroom attendants, 4 cooks and 4 nurses.

29 In the fourth place, the Italian Republic, without waiving its right of defence, points out that it is preparing amendments to the applicable legislation aimed at giving all replacement ATA staff employed in public educational establishments a real chance of securing long-term employment through the immediate filling of all currently vacant permanent posts, by way of derogation from the usual procedures for recruiting ATA staff. In addition, a new system of professional classification of ATA staff, including new progression and recruitment mechanisms, is being prepared. Any reform of recruitment mechanisms should, however, be the result of a dialogue process with the social partners and other administrations concerned.

30 The Italian Republic, therefore, asks the Court to dismiss the Commission's action as unfounded or, in the alternative, to stay the proceedings pursuant to Article 55 of the Rules of Procedure of the Court of Justice, so as to enable it to adopt the necessary legislative amendments within a reasonable time.

Findings of the Court

31 It should be noted that Clause 5 of the Framework Agreement, the purpose of which is to implement one of the objectives of that agreement, namely to place limits on the use of successive fixed-term employment contracts or relationships, requires Member States, in point 1 thereof, to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not include equivalent legal measures. The measures listed in Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such employment contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 83 and the case-law cited).

32 The Member States enjoy a certain discretion in that regard since they have the choice of relying on one or more of the measures listed in Clause 5(1)(a) to (c), or on existing equivalent legal measures (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 33 and the case-law cited).

33 In the present case, as regards, in the first place, the measures provided for in Clause 5(1)(b) and (c) of the Framework Agreement, relating to the maximum total duration of fixed-term contracts and the number of renewals thereof, the Commission states, without being contradicted by the Italian Republic, that, as regards ATA staff employed in public educational establishments, no such measures exist under Italian law. It points out, in that context, that the

provisions of Italian law laying down the maximum duration and maximum number of fixed-term contracts which public authorities are authorised to conclude for the purposes of recruiting their staff are expressly inapplicable to contracts concluded with ATA staff, whereas the provision which previously provided for a maximum duration of 36 months for such contracts was repealed in 2018.

34 In challenging the Commission's assertions, the Italian Republic points out that, whilst the provision setting a maximum duration of 36 months for fixed-term employment contracts concluded with the ATA staff at issue was in fact repealed, such repeal was in fact intended to enable that staff to gain experience through the repeated conclusion of fixed-term employment contracts and thereby increase their chances of being granted permanent status at a later stage determined, in particular, on the basis of the experience thus acquired.

35 It must be noted that such an argument merely confirms the absence, in Italian law, of measures to limit the maximum duration or number of fixed-term employment contracts that may be concluded with the ATA staff at issue and, consequently, the absence of measures to prevent the misuse of successive fixed-term employment contracts within the meaning of Clause 5(1)(b) and (c) of the Framework Agreement.

36 In those circumstances, it is necessary to examine, in the second place, whether Italian law provides, in respect of fixed-term employment contracts concluded with replacement ATA staff, for the measure referred to in Clause 5(1)(a) of the Framework Agreement, relating to the objective reasons justifying the renewal of fixed-term employment contracts or relationships.

37 In that regard, the Court has already held that the concept of 'objective reasons' must be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of successive fixed-term employment contracts. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 87 and the case-law cited).

38 On the other hand, a national provision which merely authorises recourse to successive fixed-term employment contracts in a general and abstract manner by a rule of statute or secondary legislation does not accord with the requirements as stated in the previous paragraph of the present judgment. Such a purely formal provision does not permit objective and transparent criteria to be identified in order to verify whether the renewal of such contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose. Such a provision therefore carries a real risk that it will result in misuse of that type of contract and, accordingly, is not compatible with the objective of the Framework Agreement and the requirement that it have practical effect (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 88 and the case-law cited).

39 In the present case, it is apparent from the explanations provided by the Commission that its criticism relates primarily to the provisions of Article 4(1) and (11) of Law No 124/1999, which were also at issue in the case which gave rise to the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401), pursuant to which, read

together, it is permissible to fill ATA posts 'in fact vacant and unfilled by 31 December' of the school year by means of annual supply teaching posts, 'pending the completion of competitive selection procedures for the recruitment of tenured … staff'.

40 In that regard, first, whilst the Italian Republic does not appear, in the present case, to rely, as an objective reason within the meaning of Clause 5(1)(a) of the Framework Agreement, on the need to fill, on a temporary basis, posts intended for permanent staff, that is to say, pending the completion of competitive selection procedures for the recruitment of such staff, it is nevertheless important to recall, in view of the arguments put forward by the Commission in that regard and the very wording of Article 4(1) of Law No 124/1999, which expressly refers to that need, that the Court has already held that such a need may justify the use of successive fixed-term contracts (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 96).

41 That said, in order for national legislation intended to take account of such a need to be regarded as being justified by an objective reason, the competent authorities must be able to identify, when applying that legislation in practice, objective and transparent criteria in order to ascertain whether the renewal of fixed-term contracts actually meets a genuine need, is capable of achieving the objective pursued and is necessary for that purpose, it being specified that that legislation cannot be justified under Clause 5(1)(a) of the Framework Agreement if it allows such a renewal to cover needs which are not in fact temporary but, on the contrary, fixed and permanent (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 99 and 100 and the case-law cited).

42 In that context, the Commission submits, without being contradicted by the Italian Republic, first, that the national legislation at issue does not lay down any specific time limit for the organisation of competitive selection procedures, which it states is subject to budgetary constraints and is, moreover, dependent on the natural attrition of permanent staff. Secondly, that institution states that the possibility for replacement ATA staff to take part in such competitive selection procedures is, moreover, subject to the condition that such staff members have completed at least two years' service in the performance of their fixed-term duties, a fact which that Member State has itself confirmed by referring to Article 554 of Legislative Decree No 297/1994 concerning, inter alia, permanent appointment through the organisation of competitive selection procedures, paragraph 2 of which lays down such a condition.

43 Those factors, which have not been refuted and indeed have been acknowledged by the Italian Republic, demonstrate that under the national legislation at issue, although recourse to fixed-term employment contracts for the purpose of filling by way of replacement on an annual basis posts that are vacant and unfilled in schools administered by the State is expressly limited to just a temporary period that comes to an end when the competitive selection procedures are completed, such legislation does not make it possible to be sure that the actual application of that objective reason, having regard to the particular features of the activity concerned and to the conditions under which it is carried out, is consistent with the requirements of the Framework Agreement, but is, on the contrary, such as to permit, in breach of Clause 5(1)(a) of the Framework Agreement, the renewal of such contracts in order to cover needs which are, in fact, not temporary in nature but fixed and permanent (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 108 and 109).

44 In particular, the fact that, under Article 554(2) of Legislative Decree No 297/1994, ATA staff must, in order to be eligible to take part in competitive selection procedures leading to permanent appointment and, thereby, to a permanent post, satisfy the condition of '[having] at least two years' service … in roles corresponding to those for which the competitive selection procedures are organised' tends, in itself and irrespective of the uncertain and unforeseeable nature of the organisation of those competitive selection procedures, to increase the risk of misuse of successive fixed-term contracts in that, during that minimum period of two years, such contracts may be renewed without it being necessary to ensure that the need for such renewal is temporary and not fixed and permanent.

45 In those circumstances, the need to fill permanent posts on a temporary basis pending the completion of competitive selection procedures organised for the recruitment of permanent staff, as referred to in Article 4(1) of Law No 124/1999, cannot, in the present case, be regarded as constituting an 'objective reason' justifying the renewal of fixed-term employment contracts concluded with ATA staff employed in public educational establishments, in accordance with the requirements arising from Clause 5(1)(a) of the Framework Agreement.

46 Secondly, as regards the need for flexibility specific to public education, relied on by the Italian Republic, it should be noted that the Court has already held that such a need, in particular in so far as it relates to ensuring a balance between the number of workers in posts within the public education sector and the number of pupils, may, in principle, also be taken into account as an 'objective reason' within the meaning of Clause 5(1)(a) of the Framework Agreement (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 94 and 95).

47 That said, whilst it is conceivable in the present case that paragraphs 2 and 3 of Article 4 of Law No 124/1999 fall within the scope of such a need for flexibility as regards the recruitment of ATA staff, in so far as those provisions concern the possibility of filling temporarily vacant posts, other than those which are vacant, the provisions of paragraphs 1 and 11 of that article, referred to in paragraph 39 of the present judgment and which concern vacant and unfilled posts intended for ATA staff, do not, on the other hand, contain any element capable of indicating that they are in fact intended to meet such a need for flexibility, nor, even less so, of defining the conditions governing the possibility of concluding successive fixed-term employment contracts with such staff.

48 In those circumstances, even assuming that the national legislation at issue pursues the objective relied on by the Italian Republic, namely to allow account to be taken of the need for flexibility specific to the public education sector, the legal situation of ATA staff resulting from that legislation, as presented to the Court, does not satisfy the requirements of clarity and precision which must characterise national implementing measures.

49 Such an objective cannot render that legislation compatible with Clause 5(1)(a) of the Framework Agreement, since it does not demonstrate the existence of precise and concrete circumstances characterising the activity in question and, therefore, justify, in that particular context, the use of successive fixed-term employment contracts, in accordance with the case-law referred to in paragraph 37 above (see, by analogy, judgment of 26 February 2015, *Commission* v *Luxembourg*, C-238/14, EU:C:2015:128, paragraph 50).

50 That is all the more so in the present case because the vacant and unfilled posts to which Article 4(1) and (11) of Law No 124/1999 refers are intended to be filled by permanent staff and are thus, a priori, not of a temporary but of a permanent nature.

51 It follows that the need for flexibility specific to the public education sector, as invoked by the Italian Republic, cannot be accepted in the present case as grounds for considering that the national legislation at issue provides, in accordance with Clause 5(1)(a) of the Framework Agreement, an 'objective reason' justifying the renewal of fixed-term employment contracts concluded with ATA staff employed in public educational establishments.

52 In the third place, as regards the possible existence, in Italian law, of 'equivalent legal measures', within the meaning of Clause 5(1) of the Framework Agreement, it should be recalled that that expression is intended to cover any measure of national law which, like the measures laid down by that clause, is intended to effectively prevent the misuse of successive fixed-term employment contracts or relationships (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 76 and the case-law cited).

53 In the present case, it should be noted that, although the Commission addresses the possibility that the Italian Republic might seek to rely on the adoption of such equivalent legal measures, on the ground that it has organised, in recent years, a series of competitive selection procedures enabling a number of workers belonging to ATA staff to be granted permanent status, there is nothing to suggest that that Member State actually intended to rely on the organisation of those competitive selection procedures as an 'equivalent legal measure'.

54 That said, and in any event, it is true that the Court has held that the organisation, within the required time limits, of selection procedures aimed at permanently filling posts temporarily occupied by fixed-term workers is such as to prevent the precarious status of those workers from becoming permanent, by ensuring that the posts they occupy are rapidly filled on a permanent basis. Thus, such a measure may prove capable of preventing abuse resulting from the use of successive fixed-term employment relationships and thus constituting an 'equivalent legal measure' (see, to that effect, judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraphs 93 to 95).

55 However, as the Commission has pointed out, without being contradicted by the Italian Republic, it appears, in the present case, that the competitive selection procedures organised in the recent past with a view to granting permanent status to workers classified as ATA staff were not held within specific time limits set for that purpose, but, on the contrary, on an ad hoc and unpredictable basis, similar to those referred to in paragraph 42 of the present judgment, so that they cannot be regarded, for reasons analogous to those set out in paragraphs 43 and 44 of the present judgment, as constituting an 'equivalent legal measure' within the meaning of Clause 5(1) of the Framework Agreement (see, to that effect, judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 98).

56 In the fourth place and finally, in so far as the Italian Republic considers that the proceedings should be stayed pending the adoption of certain legislative amendments currently being prepared, which provide for new mechanisms for the career progression and recruitment of ATA staff and which, in its view, are likely to put an end to any possible infringement of Clause 5(1) of the Framework Agreement, such an argument cannot succeed. In that regard, it suffices to recall that, according to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at

the end of the period laid down in the reasoned opinion (judgment of 14 April 2005, *Commission* v *Luxembourg*, C-519/03, EU:C:2005:234, paragraph 18 and the case-law cited), namely, in the present case, on 19 June 2023.

57 It must, therefore, be held that the national legislation at issue does not provide for any of the measures provided for in Clause 5(1)(a) to (c) of the Framework Agreement or contain equivalent legal measures within the meaning of that provision. Accordingly, the action brought by the Commission is well founded.

58 In the light of the foregoing considerations, it must be held that, by failing to adopt measures to prevent the misuse of successive fixed-term contracts for replacement ATA staff employed in public educational establishments, the Italian Republic has failed to fulfil its obligations under Clause 5 of the Framework Agreement.

Costs

59 Under Article 138(1) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the Italian Republic's failure to fulfil its obligations has been established, the latter must be ordered to pay the costs.

On those grounds, the Court (Tenth Chamber) hereby rules:

1. **By failing to adopt measures to prevent the misuse of successive fixed-term contracts for administrative, technical and auxiliary replacement staff employed in public educational establishments, the Italian Republic has failed to fulfil its obligations under Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.**

2. **The Italian Republic is ordered to pay the costs.**

[Signatures]